330.

SUPREME COURT OF THE UNITED STATES.

No. 71.

JOHN F. GAMES, ET AL., PLAINTIFFS IN ERROR.

VERSUS

LESSEE OF WALTER DUN.

ERROR TO THE CIRCUIT COURT U. S., FOR OHIO.

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Langtree & O'Sullivan, Print.

In the within case, I consent to be appointed guardian ad litem, by the Supreme Court, to Walter A. Dun and Robert G. Dun, infant heirs of Walter Dun, dec'd.

P. B. WILCOX.

Dec. 21, 1838.

Pleas begun and held at the court-house, in the city of Columbus, on the first Monday in the month of July, being the second day of the same month, in the year of our Lord, one thousand eight hundred and thirty-eight, and of the American Independence, the sixty-second, before the honorable John McLean, and Humphrey H. Leavitt, Judges of the seventh circuit court of the United States, within, and for the district of Ohio.

Among other proceedings had, were the following, to wit:

(Tuesday, July third.)

JOHN STILES EX. DEM. WALTER DUNN, *vs.* JOHN F. GAMES, and NATHAN GILBERT. } In Eject.

Be it remembered, that heretofore, to wit, at a circuit court of the United States, within and for the district of Ohio, begun and held at the court-house in the city of Columbus, on the second Monday, in the month of July, Anno Domini, one thousand eight hundred and thirty-six, and afterwards, to wit, in the same term of July, to wit, on Thursday, the fourteenth day of the same month, came John Stiles, lessee of Walter Dun, by Messers. Creighton and Bond, his attornies, and filed in court here, his declaration against Thomas Nokes, in a plea of tresspass and ejectment, with a notice thereto annexed, in form following, viz:

UNITED STATES OF AMERICA, *Ohio District, ss.*

CIRCUIT COURT OF THE UNITED STATES.—For the seventh circuit, and district of Ohio.

July Term, 1836.

John Stiles, a citizen of, and resident in the State of Kentucky, by Creighton and Bond, his attornies, complains of Thomas Nokes, a citizen of, and resident in the State of Ohio, in custody, &c., of a plea of trespass, with force and arms, &c. For that whereas, Walter Dun a citizen of, and resident in the State of Kentucky, on the first day of January, in the year of our Lord one thousand eight and thirty-six, at the counties of Adams, and Brown, in the district aforesaid, had demised, granted, and to farm, let, to the said John Stiles, all that tract or parcel of land situate, lying and being in said counties, and district of Ohio aforesaid; beginning at four small locusts, southeast corner, to survey No. 1,688, northwest corner to survey No. 1,691, and southwest corner to James Williams, survey No.

1,164, running with the line of No. 1,691, S. 30° W. 400 poles, to a sugar tree, and two lynns, southwest corner to No. 1,691, thence north 60° W. 400 poles, crossing a branch at 179 poles to a white oak, sugar tree, and two lynns, thence N. 30° east 400 poles, crossing a branch at 380 poles, to two sugar trees, and a dogwood, southwest corner to survey No. 1,688, thence with the line of said survey, south 60° east 400 poles, to the beginning, with the appurtenances, to have and to hold the premises aforesaid, with the appurtenances, to the said John Stiles, and his assigns, for and during the full end, and term of twenty-one years from thence next following, and fully to be complete and ended; by virtue of which said demise, the said John Stiles entered into the premises aforesaid, and was thereof possessed, until the said Thomas Nokes, afterwards, to wit, on the second day of January, in the year last aforesaid, at the county aforesaid, and within the jurisdiction aforesaid, with force and arms entered into the premises aforesaid, with the appurtunances, which the said Walter Dun demised to the said John Stiles in manner aforesaid, for the term aforesaid, which is not expired, and ejected the said John Stiles from his said farm, and other wrongs to the said John Stiles, then and there did against the peace, and to the damage of the said John Stiles, one thousand dollars, and therefore he brings suit, &c.

CREIGHTON & BOND,
Att'ys for Plff's.

To Joseph Roberts, Nathan Gilbert, John Roberts, Joel Burbage, and John F. Games.

I am informed that you are in possession of, or claim title to the premises in the within declaration of ejectment mentioned, or to some part thereof; and I being sued in this action as casual ejector, and having no claim or title to the same, do advise you, that you appear in the circuit court of the United States, for the district of Ohio, on the first day of next term, by some attorney of that court, and that then and there, by a rule to be made of said court, you cause yourselves to be made defendant in my stead, otherwise, I shall suffer judgment to be entered against me by default, and you will be turned out of possession.

Your friend,
THOMAS NOKES.

THE STATE OF OHIO.—*Adams County, ss.*

Be it remembered, that this day, William Grimes, personally appeared before me, the subscriber, a justice of the peace, in and for the county aforesaid, and being sworn in due form of law, deposeth and saith, that on the 20th day of June instant, he delivered to the within named Nathan Gilbert, John F. Games, and Joel Burbage, true copies of the within declaration of ejectment, and notice thereto annexed, and at the same time informed them, that it was a declaration of ejectment, and that if they did not appear at the circuit court of

the United States, for the district of Ohio, (to be holden at Columbus,) on the first day of the next term, and then and there, by a rule of that court, cause themselves to be made defendants to the cause, judgment will be entered against them by default, and they will be turned out of possession. And on the same day, he delivered to the wife of the said Joseph Roberts, (he brings from home,) a true copy of the within declaration of ejectment, and notice thereto annexed, and gave her the same information that he did to the other three defendants; John Roberts not found.

WILLIAM GRIMES.

Sworn to and subscribed before me, this 21st day of June, 1836; the words "John F. Games" interlined before signed.

DANIEL BOYLE,
Justice of the Peace.

This day came the pl'ff. by his attornies, and also the defendants by Mr. Brush, their attorney, and by consent, John F. Games, and Nathan Gilbert, are made defendants in the room of the now defendant, Thomas Nokes, the casaul ejector, and the said defendants confess the lease, entry, and ouster, in the plaintiffs declaration supposed, and admit that they were in possession of the premises, in the plaintiffs declaration, mentioned at the time of the service thereof, and agree to insist upon the titles only at the trial, and for pleas say, that they are not guilty of the trespass and ejectment in the pl'ffs declaration supposed; and of this, they put themselves on the country for trial, and the plaintiff doth the same; therefore, let a jury come, &c. And thereupon this cause was continued, and afterwards, to wit, at the December term of said court Anno Domino, one thousand eight hundred and thirty-six, this cause is further continued, and afterwards, to wit, at the May term of said court Anno Domini, one thousand eight hundred and thirty-seven, this cause was further continued, and afterwards, to wit, at the December term of said court Anno Domini, one thousand eight hundred and thirty-seven; on motion this cause was continued at the costs of the plaintiff, and now at this day, to wit, being the time and place first herein aforesaid mentioned, to wit, on Tuesday the third day of July, Anno Domini, one thousand eight hundred and thirty-eight, came the parties by their attornies, and thereupon came a jury to wit:

C. J. McNulty, Azariah Eddy, William Werden, Nehemiah Allen, Thomas Patterson, Henry King, Joseph Ankeny, Samuel J. Cox, James Hampson, Jonathan Taylor, John Greenwood, and Frederick Lounsberry, who being empannelled, sworn, and affirmed, the truth to speak upon the issue joined between the parties; but the investigation of this cause not being completed, the court adjourned the jury until to-morrow morning, until which time this cause was continued.

Wednesday, July the fourth.

This day came the parties by their attornies, and the investigation of this cause being completed, the jury heretofore sworn in this cause,

upon their oaths do say, that the said defendants are guilty of the trespass and ejectment, laid to their charge in manner and form as the said plaintiff hath complained against them, and they assess the damages of the said plaintiff by reason thereof, to one cent.

Thursday, July fifth.

Mr. Brush, attorney for the defendants, moves the court to set aside the verdict entered in this cause on yesterday, and to grant a new trial for reasons now filed, which are as follows, to wit:

7th Circuit Court, U. S.

John F. Games, and Nathan Gilbert, *ads.* / John Stiles, Ex. Dem Walter Dun. } Motion for new trial by defendants, for the following reasons.

1st. Defendants counsel professionally states to the court, that he had not, when the cause went to trial, the least idea by any rule of the court, or the consent rule entered into by him for the defendants, that it would make any difference in the proofs to be given by the parties; from the heretofore accustomed practice, with which he has been familiar, or he would not have consented to have such consent rule entered in the case, as was entered; and now, before the trial, would have asked the court to allow the same to be amended, so as that the defendant should be allowed to defend, only for the two hundred acres they claim, and he asks that permission now, if the court will grant the new trial.

2d. He says that he has been surprized at the trial, by the rejection of the tax deed, accompanied by the record of the previous proceedings. He says, that the said record contained what the Supreme Court of Ohio admitted as sufficient, of the trial of the case of Carlisle's lessee vs. Longworth, in substance, changing names, and other immaterial matters, to suit the different cases; that he did confidentially believe, that there could not be any valid objection to the said record; and that the matters now required can be substantiated, at another term, so as to authorize its admission, if he understands the opinion of the court as delivered, and that by bringing to the court the facts and proofs in the case of Carlisle vs. Longworth, he will be able to shew that the evidence now here to that matter, is such as that court admitted.

3d. He states, that he has not had any opportunity to compare the record from Adams county, with the original, and believes that a material entry which ought to have been in it, is omitted, and his better opinion is from recollection, that there are two such material omissions. One relative to the first order of the court made in this case, and the other relative to the proof of publication, against the unknown heirs of Buchanan.

H. BRUSH,
Att'y for Def'ts.

July 5th 1838.

Friday, July sixth.

This cause came on to be heard on the motion for a new trial, and the arguments of counsel being heard, and mature deliberation being thereupon had, it is considered that the said motion be overruled. Therefore it is considered that the said plaintiff have his term and possession yet to come, and unexpired in the premises, together with one cent, the damages aforesaid, by the jurors in form aforesaid assessed, and also his costs in this behalf expended; during the progress of this cause, the defendants by their attorney, tendered their two separate bills of exceptions, to the opinions of the court; and prayed that the same might be signed, sealed, and enrolled, and made a part of the record in this case, which is accordingly done. Which bills of exceptions, are as follows, to wit:

7th Circuit Court, U. S.—*Ohio District.*

John F. Games and Nathan Gilbert, *ads.* John Stiles Ex. Dem. Walter Dun. } Ejectment.

Be it remembered, that on the trial of this cause this day, July 14th 1838, the plaintiff in support of his action offered in evidence, 1st, a certified copy of a patent from the President of the United States to David Buchanan, bearing date 22d May, 1802, hereby referred to as a part hereof; 2d, the plaintiffs then offered, in evidence, a certified copy of a paper purporting to be a deed from, or signed by, David Carrick Buchanan, to Walter Sterling, bearing date 27th June, 1825, containing recitals, endorsements, and certificates, as by its inspection will appear, and hereby referred to as a part hereof, which copy or paper, the defendant, by their counsel, objected to, as not admissible evidence in this case, without further proof; 1st, because it recited the proceedings and "decree of a court of the United States, for the fifth Circuit and Virginia District, held in the city of Richmond, whereby the said court decreed, &c., as stated in said copy or paper so offered in evidence, the said proceedings and decree not being produced, or offered, to accompany the copy or paper so offered as a deed, that said record of proceedings might be seen and inspected by the court and jury, to shew the true grounds, and consideration of said instrument in writing, paper, or deed; 2d, because said instrument was not duly acknowledged and and proven, according to law, there being no proof of the delivery, either in the acknowledgment, or other proof, except what appears on the deed, and that it was in possession of the Lessor of the Plaintiff; 3d, it did appear that the grantor David Carrick Buchanan, was the same person named as grantee, in the aforesaid patent from the U. S. as David Buchanan, and the defendants insisted that the same ought not to be admitted in evidence. Thereupon the Court overruled the objections, and declared their opinions that the same ought to be admitted, and that the jury could determine, from the evidence, as to the identity of the grantor; the same was ad-

mitted in evidence to the jury, and the defendants counsel excepted to the said opinion, and tendered this bill of exceptions; then, 3dly, the plaintiff, in further support of his action, offered in evidence a certified copy of another paper, purporting to be a deed from said Walter Sterling to Walter Dun, lessor of the plaintiff, which defendants counsel objected to the admission of as evidence, on the ground that the delivery thereof was not proved, nor acknowledged in the acknowledgment and proof thereof, thereon endorsed, and insisted it ought not to be admitted; but the court overruled the objection, and declared their opinion to be, that it should be admitted, and it was, accordingly; whereupon the plaintiff rested his cause. The defendant's then, in their defence, offered, in evidence, a certified copy of a paper, purporting to be a deed from William Middleton, Auditor of Brown county, to John S. Wills, bearing date April 22d, 1824, for two hundred acres of land, and insisted that it was duly acknowledged and recorded as such deed, and such copy was duly certified by the Recorder of Brown county, to shew which, the same, with endorsements thereon, is referred to as a part hereof, and which the plaintiff objected to as not competent to go to the jury, without evidence of the proceedings and acts of the public officers, prior, and at the sale of said land, for the tax, and insisted it ought not to be admitted, and the Court sustained the objection, and overruled the said evidence, and declared their opinion that the same evidence should not be admitted, and the same was rejected accordingly. The defendants then offered the same deed or copy of deed, accompanied by a duly certified copy of the record of the proceedings, at and before the sale of said land for taxes, bearing date 9th May, 1838, certified by Hezekiah Lindsey, county Auditor of said county of Brown, which copies or papers, and certificates thereon, are herein referred to as a part of this bill of exceptions; whereupon the plaintiffs, by counsel, objected to the admission of the same, on the ground that the same did not contain all the legal requisites to justify and authorize said sale and conveyance of said land for taxes; and of this opinion was the court, and declared their opinion to be, that the same ought not to be admitted in evidence in this case, and the same was rejected accordingly, and the defendants except to all and each of the above opinions of the Court. The defendants then gave, in evidence, the duly authorized transcript of the record, proceedings, and decree, of the Supreme Court of the State of Ohio, in a certain case wherein White's heirs, and J. S. Wills's heirs, and H. Brush, were complainants, and David Buchanan, deceased, in his life time was defendant, and his unknown heirs, defendants after his death by will of revivor, wherein the title to the premises in question, and other lands, were decreed to complainants; the defendants claiming title under said Wills, which transcript of record is referred to as a part hereof. The defendants then gave, in evidence, a deed from said John S. Wills to John W. Games, one of the defendants of part of said 200 acres of land, and rested his case. This bill of exceptions, containing the opinions of the Court against the defendants, on the points aforesaid, with said defendants exceptions to said opinions, said defendant

pray the Court to sign and seal, and order to be recorded, according to law; done accordingly.

JOHN McLEAN, [SEAL.]
H. H. LEAVITT, [SEAL.]

The following patent, deed, and records, referred to in the foregoing bill of exceptions, to wit: Thomas Jefferson, President of the United States of America; to all to whom these presents shall come, greeting:

Know ye, that in consideration of military services performed by Samuel Gill, (Captain for three years,) to the United States, in the Virginia line, on Continental establishment, and in pursuance of an act of the Congress of the United States, passed on the 10th day of August, in the year 1790, entitled "an act to enable the officers and soldiers of the Virginia line, on Continental establishment, to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Scioto," and another act of the said Congress, passed on the 9th day of June, 1794, amendatory of the said act, there is granted, by the said United States, unto David Buchanan, a certain tract of land containing one thousand acres, situated between the Little Miami and Scioto rivers, northwest of the river Ohio, as by survey bearing date the twenty-fourth day of May, one thousand seven hundred and thirty-eight, and bounded and described as follows, to wit: surveyed for Humphrey Brooke, 1,000 acres of land, on part of military warrant No. 3,033, in favor ot the said Samuel Gill, (the whole thereof being for four thousand acres,) on the northwest of the Ohio, and on the waters thereof, beginning at four small Locusts, southeast corner to his former survey, No. 1,688, northwest corner to his other survey, No. 1,691, and southwest corner to James Williams' survey, No. 1,164, running with the line of No. 1,691, south thirty degrees, west four hundred poles, to a Sugar tree and two lynns; southwest corner to No. 1,691, thence north sixty degrees, west four hundred poles, crossing a branch, at one hundred and seventy poles, to a white oak, sugar tree, and two lynns; thence north thirty degrees, east four hundred poles, crossing a branch at three hundred and eighty poles to two sugar trees, and adogwood, southwest corner to his former survey, No. 1,688; thence with his line south sixty degrees, east four hundred poles to the beginning, which said tract of land was assigned after survey thereof by the said Humphrey Brooke, to the said David Buchanan, with the appurtenances, to have and to hold, the said tract of land, with the appurtenances, unto the said David Buchanan, his heirs, and assigns for ever.

In witness whereof, the said Thomas Jefferson, President of the United States of America, hath caused the seal of the United States to be hereunto affixed, and signed the same with his hand, at the city of Washington, the 22d day of May, in the year of our Lord one thousand eight hundred and two, and of the Independence of the United States of America the 26th.

[SEAL.]

By the President: TH. JEFFERSON.

JAMES MADISON, *Secretary of State.*

Recorded in volume three, folio 94, of patents for lands, granted to the Virginia line on Continental establishment.

GENERAL LAND OFFICE, 6th September, 1827.

I certify that the within is a true copy of the original patent of record in this office.

In testimony whereof I have hereunto set my hand and caused to be affixed the seal of this office, at the city of Washington, on the day and year above written.

[SEAL.]

G. W. GRAHAM, *Commissioner.*

Copy of the Deed.

David C. Buchanan, to Deed, to Walter Sterling presented for record, November 30th, 1837:

Know all men by these presents, that I, David Carrick Buchanan, Esq'r, formerly David Buchanan, Esq'r, surviving partner of the House of Buchanan & Pollock, in Virginia, in terms of a decree of a court of the United States, for the fifth circuit and Virginia district, held in the city of Richmond, wherein William Sterling, Walter Sterling, and Margaret Coates, merchants and partners, carrying on trade under the style and firm of Sterling, Brothers & Company, were Plaintiffs against me in absence, and Edmund W. Rootes, executor of Allen Pollock, who was executor of Robert Pollock, who was acting partner of the said house of Buchanan & Pollock; whereby the said court decreed, and ordered, that I should, by deed duly executed to pass lands in the State of Ohio, convey to the said plaintiffs, or to such person or persons as they shall appoint, a fee simple title in the lands after described, with warranty against myself, and all persons claiming under him, which I am willing, and it is just and reasonable, it should be done; and the said Walter Sterling, Brothers & Company, having defined the said conveyance to be to the said Walter Sterling, and his heirs and assigns; therefore, and in consideration of the sum of five shillings sterling, to me in hand paid, I do hereby bargain, sell, alienate, dispose, enfeoff and confirm, unto the said Walter Sterling, merchant in London, and to his heirs and assigns, whatsoever, all and sundry, and all and whole, these three tracts of county land in the State of Ohio, each containing one thousand acres, situated between the Little Miami and Scioto, northwest of the river Ohio, and contained in, or granted by, three several patents, dated twenty-second May, eighteen hundred and two, and as by the several surveys therein mentioned, viz: First. That tract of one thousand acres, situated as aforesaid, and as by survey, bearing date the twenty-fourth day of May, one thousand seven hundred and eighty-eight, and bounded and described as follows, to wit: Surveyed for Humphrey Brooke, one thousand acres of land, on part of a military warrant, number three thousand and thirty-three, in favor of Samuel Gill, (the whole thereof being for four

thousand acres,) on the northwest of the Ohio, and on the waters thereof, beginning at four small locusts, southeast corner to his former survey, number sixteen hundred and eighty-eight, northwest corner to his other survey, number sixteen hundred and ninety-one, southwest corner to James Williams's survey, number eleven hundred and sixty-four, running with the line of number sixteen hundred and ninety-one, south thirty degrees, west four hundred poles, to a sugar tree and two lynns, southwest corner to number sixteen hundred and ninety-one, thence north sixty degrees, west four hundred poles, crossing a branch at one hundred and seventy poles, to a white oak, sugar tree, and two lynns, thence north thirty degrees, east four hundred poles, crossing a branch, at three hundred and eighty poles, to two sugar trees and a dogwood, southwest corner to his former survey, number sixteen hundred eighty-eight, thence with his line south sixty degrees, east four hundred poles to the beginning. Second. The other tract, also, situated as aforesaid, and as by survey, bearing date the 12th day of April, in the year one thousand seven hundred and eighty-eight, and bounded and described as follows, to wit: Surveyed, for Humphrey Brooke, one thousand acres of land, on part of a military warrant, number three thousand and thirty-three, in favor of the said Samuel Gill, (the whole thereof being for four thousand acres,) on the waters of the Ohio, beginning at an ash, gum, and dogwood, southwest to Colonel Samuel Hopkins's survey, number nine hundred and fifteen, running with his line north thirty degrees, east three hundred and seventy-four poles, to a white oak, elm, and sugar tree, on a small branch northwest corner to Hopkins, and in the line of John McDowell's survey, number nine hundred and two, thence with McDowell's line, the line of a survey for James Asken and others, number fourteen hundred and twenty-six, north sixty degrees, west four hundred and twenty-eight poles, to three sasasfras, in the line of Nicholas Fitzimmon's survey, number fourteen hundred and twenty-six, thence south thirty degrees, west three hundred and seventy-four poles, to a white oak, gum, and sugar tree, thence south sixty degrees, east four hundred and twenty-eight poles to the beginning. And thirdly. That other tract, also, situated as aforesaid, and as by survey, bearing date the twelfth day of April, in the year one thousand seven hundred, and eighty-eight, and bounded and described as follows, to wit: Surveyed for Humphrey Brooke, one thousand acres of land on part of military warrant, numbered three thousand and thirty-three, in favor of the said Samuel Gill, (the whole thereof being for four thousand acres,) on the waters of the Ohio, beginning at four small locusts, southwest corner to James Williams's survey, number eleven hundred and sixty-four, running with his line south sixty degrees, east four hundred poles, crossing Three-mile-creek, at three hundred and ninety-four poles, to a white oak, and two sugar trees, southeast corner to Williams, thence south thirty degrees, west four hundred dred poles to a hickory, and two sugar trees, thence north sixty degrees, west four hundred poles, crossing the creek at one hundred and eighty poles, to a sugar tree and two lynns; thence north thirty degrees, east four hundred poles to the beginning, by what name or

names, or howsoever, the same or any of them are called or known, with their, and every of their appurtenances whatsoever, and the reversion or reversions, the remainder and remainders, of all and singular the said tracts of land and premises hereby granted, and every part and parcel thereof; and of all rents, issues, services, and profits, to them, or any of them, or any part or parcel of them, or any of them incident belonging and appertaining; and also, all and every the estate, and estates, rights, titles, claims, interests, and demands, whatsoever, of him, the said David Buchanan, in, to, or out of the said subjects; and all and every the deeds, evidences, writings, and maniments, whatsoever, touching or concerning the said lands and premises, whatsoever, hereby granted, or mentioned to be granted, or any of them, or any part or parcel thereof, to have and to hold the said subjects, with their, and every of their appurtenances, unto the said Walter Sterling, his heirs and assigns forever, to the only proper use and behoof of him, the said Walter Sterling, his heirs and assigns, forever; and I do hereby grant for me, and my heirs, that I, and they, the said subjects, with all and singular their, and every of their rights, members, and appurtenances, unto the said Walter Sterling, his heirs and assigns, against me, and my heirs, and against all and every other person, or persons, claiming, or to claim, under me, or my heirs, shall and will warrant, and forever defend, by these presents; and I bind and oblige myself, and my foresaid, specially to warrant the said subjects and these presents, from our own proper facts and deeds accordingly. And I bind and oblige myself, and my foresaids, that I, and they, shall and will, if and when required by said Walter Sterling, or his foresaids, and at the proper charges and expenses of the said Walter Sterling, or his foresaids, grant, execute, and deliver, all such further, and other more ample, formal, or requisite deeds, charters, infeftments, as are or may be required, for fully and effectually resting and seizing the said Walter Sterling, or his foresaids, in the said subjects, in the freest and most ample manner that I, the said David Buchanan, heretofore held, or do, or may hold, the said subjects, myself before the granting hereof; and I hereby consent to the registration of these presents, in all judges books, competent for the preservation and execution, according to the usual form, and for that purpose, and for appearing before the proper registrar, or other officer of the court requisite, and acknowledging and confessing my signature, hereunto, I hereby appoint , and each of them, conjunctly, and severally, my prosecutors and attorneys, with full power to that effect.

In faith and testimony whereof, I have signed and sealed these presents, written upon stamped paper, by William Kennedy, apprentice to William Graham, writer in Glasgow, this twenty-seventh day of June, eighteen hundred and twenty-five years, at Drumpellier, in the county of Lanark, in that part of Great Britain called Scotland, before, and in presence of these witnesses.

ROBERT WALLACE, *Writer in Glasgow.*
And LAWRENCE HILL, *Also Writer there.*

Signed, sealed, and delivered, being first duly stamped, before, and in presence of

ROBERT WALLACE, Witness.
LAWRENCE HILL, Witness.

DAVID CARRICK BUCHANAN, [SEAL.]

Robert Wallace, Esquire, writer in Glasgow, and Lawrence Hill, also writer there, make oath, and say, that they, along with Andrew Buchanan, Esquire, son of David Carrick Buchanan, were present at Drumpellier, upon the twenty-seventh day of June, eighteen hundred and twenty-five, and did then and there, see the said David Carrick Buchanan seal, and as his, the said David Carrack Buchanan's own proper act and deed, in due form of law, acknowledge and deliver this present conveyance.

And that in testimony of such due execution of the said conveyance, they, the deponents, did, in the presence of the said David Carrick Buchanan, and of each other, severally set and subscribe their names thereto; and further, the specially and severallly depose that the said deed is, in all respects, executed according to the forms used in Scotland; and also, according to those used in England in the like case.

ROBERT WALLACE,
LAWRENCE HILL.

Sworn at the city of Glasgow, this twenty-ninth day of June, eighteen hundred and twenty-five years, before me, Lord Provost, and chief magistrate of said city.

MUNGO N. CAMPBELL.

To all whom these presents shall come:

I, Mungo Nutter Campbell, Esquire, Lord Provost and Chief Magistrate of the City of Glasgow, in that part of Great Britain, called Scotland, do hereby certify, that on the day of the date hereof, personally came and appeared before me, Robert Wallace, and Lawrence Hill, the deponents named in the affidavit, hereunto written, being persons well known and of good credit, and by solemn oath, which the said deponents then took before me, upon the Holy Evangelists of Almighty God, did solmnly and sincerely declare, testify, and depose to be true, the several matters and things mentioned and contained in the annexed affidavit.

In faith and testimoney whereof, I the said Lord Provost, have caused the seal of the said City of Glasgow, to be hereunto put, and affixed this twenty-ninth day of June, eighteen hundred and twenty-five.

[SEAL.]

MUNGO N. CAMPBELL.

I, William Graham, Esquire, of the City of Glasgow, in Scotland, Notary Public, duly admitted, allowed, and sworn, dwelling and practising therein, do hereby certify, and make known, to all to whom

these present shall and may concern, that Mungo Nutter Campbell, Esquire, who hath signed and attested the within deposition, as sworn before him, is now Lord Provost and Chief Magistrate of said City of Glasgow, and that the name Mungo N. Campbell, subscribed to the said deposition and certificate thereto, is of the proper handwriting of the said Mungo Nutter Campbell, and was so subscribed by him, in my presence, on the day and year, and at the place mentioned therein, and that the said deed to which the same is annexed, is an authenticated probative deed, according to the laws of this realm.

In witness whereof, I have hereunto set my hand and
[SEAL,] seal, this twenty-ninth day of June, in the year of our Lord, eighteen hundred and twenty-five.

WM. GRAHAM, *Not. Pub.*

I, David Walker, Consul of the United States of America, for Glasgow, and the dependencies thereof, do hereby certify, to all whom these presents shall come, that Robert Wallace, and Lawrence Hill, the witnesses who have signed the affidavit herein contained, are men of good fame and character, and qualified to judge and speak *the* truth of, and depose to, the matters set forth in their affidavit, as also, that Mungo N. Campbell, before whom the affidavit is emitted, is at present acting Chief Magistrate, and that the affidavit and signature thereto of the magistrates and witnesses, were made in my presence, and also, that William Graham the Notary Public, who hath also attested the same, is a Notary Public of good fame and character, practising in Glasgow, and that all faith may and ought to be given to his acts, accords; and further, to the best of my knowledge and belief, the within is a regularly executed deed, agreeably to the laws and practice of this place, in like matters.

Given under my hand and seal of office, in Glasgow aforesaid, this twenty-ninth day of June, in the year
[SEAL.] of our Lord, one thousand eight hundred and twenty-five, and of the Independance of the United States, the forty-ninth.

DAV. WALKER.

(Recorded November, 30th, 1837.)

I, David Crawford, Recorder of Brown County, Ohio, hereby, certify, that the foregoing is a correct copy of a deed from David Carrick Buchanan, to Walter Sterling, now of record in my office, in book of deeds, letter P. No. 15, pages, 23, 24, 25, and 26.

In testimony whereof, I have hereunto set my hand
[SEAL.] and affixed the seal of my office at Georgetown, this 12th day of June, A. D. 1838.

DAVID CRAWFORD, *Recorder,*
Brown County, Ohio.

This indenture witnesseth, that whereas, on the twenty-second day of April, in the year of our Lord, one thousand eight hundred and twenty-four, for and in consideration of the sum of fifty dollars

and six cents, to me, William Middleton, county auditor, in hand paid, the receipt whereof is duly acknowledged, as appears by a certificate of sale to John S. Wills, for lands hereinafter described, sold by William Middleton, county auditor, as aforesaid, to John S. Wills, on the twenty-ninth day of December, in the year of our Lord, one thousand eight hundred and twenty-three, for arrearages of taxes due from Humphrey Brooke to the State of Ohio, for the years of our Lord, one thousand eight hundred and twenty-one, 1822, and 1823, inclusive, for the lands entered in the name of Humphrey Brooke, for taxation of one thousand acres, by number of entry 1,690, lying and being in the county of Brown, and on the waters of Ohio, described by report of survey made by the county surveyor of the said county of Brown, as follows: beginning at a stake near where two sugar trees stand, said trees now down, shown as the N. W. corner of Humphrey Brooke's survey, No. 1,690, thence with the original line of the survey south 30° W. 178, 9 poles crossing the little east fork of Eagle creek at 28 poles, to three beeches in said line, thence south 59½ E, 179, 9 poles to a dogwood, and two sugar trees; thence north 30° E. 178, 9 *poles* to a stake in the original line; thence with said line N. 59½°, W.178, 9 poles to the beginning, containing two hundred acres of land; now know you that I, William Middleton, auditor of Brown county and State of Ohio, for and in consideration of the premises aforesaid, by virtue of the authority in me vested, have granted, conveyed, and confirmed, and by these presents, do grant, convey, and confirm, unto the said John S. Wills, and to his heirs and assigns, the said two hundred acres of land, together with all the improvements whatsoever, to the said premises belonging, or in any wise appertaining, and the reversions, remainders, and profits thereof, and all the estate, right, title, and interest of him, the said Humphrey Brooke, or of the former proprietor of in and to the same. To have and to hold the lands hereby conveyed, with all and singular the premises, and every part and parcel thereof, with every of the appurtenances, unto the said John S. Wills, his heirs and assigns forever.

In testimoney whereof, I, the said William Middleton, auditor of the county aforesaid, have hereunto set [SEAL.] my hand and seal, this twenty-second day of April, one thousand eight hundred and twenty-four.

WILLIAM MIDDLETON,
Auditor of Brown County.

Signed, sealed and delivered
in presence of
HENRY MERRITT, and
G. W. KING.

The State Ohio, *Brown County.* ss.

Before me, the subscriber, a Justice of the Peace, in and for said county, this day, personally came William Middleton, Esq., auditor of the county aforesaid, and acknowledged the above indenture to be his official act and deed, for the purposes therein mentioned.

Given under my hand and seal, this third day of May, one thousand eight hundred and twenty-four.

GEORGE W. KING, [SEAL.]

(Recorded June 10th, 1836.)

I hereby certify, that the above and foregoing is a true copy of the original record of the above and foregoing deed, as recorded in book D, page 110, in the recorder's office of Brown county, Ohio.

In testimoney whereof, I have hereunto set my hand and [SEAL] seal of office, this 6th day of June, 1836.

CHARLES WHITE, *R. B. C. O.*

Record of the proceedings relative to the advertising, selling, and conveying the lands delinquent for tax, for the year one thousand eight hundred and twenty-one, one thousand eight hundred and twenty-two, and one thousand eight hundred and twenty-three, within the county of Brown, and State of Ohio.

Be it remembered, that the following lands, as herein set forth, advertised for sale, in the names of the person to each tract annexed, were regularly entered on the duplicates for taxation, and sent out for collection, by the county auditor of Brown county, for the year one thousand eight hundred and twenty-one, the tax whereon not being paid for said year, the collector of said county returned the same as delinquent; therefor, whereupon the said county auditor made out, and transmitted to the auditor of State, a list of said lands so returned as delinquent; that afterwards a list of said lands, with the amount of taxes, penalty and interest charged thereon, was transmitted by the auditor of State, to the county auditor of said county, whereupon a a copy thereof was published three weeks in succession, in a news paper printed at Georgetown, Brown county, Ohio, in general circulation in said county; and afterwards, the said county auditor, in making out the duplicate for said county, the succeeding year, to wit, for the year one thousand eight hundred and twenty-two, charged each tract, in addition to the tax for said year, one thousand eight hundred and twenty-two, with the tax, interest and penalty of the preceding, and sent the same out, a second time for collection, the tax on said land not being paid for the year one thousand eight hundred and twenty-two, they were a second time returned delinquent for the non-payment of the tax, penalty and interest charged thereon; a list of which was again transmitted to the auditor of State, that afterwards, the said auditor of State did transmit to said county auditor, a separate list of said lands, so as aforesaid a second time, returned delinquent, with the tax, interest and penalties charged thereon to the county auditor, for the years one thousand eight hundred and twenty-one, and one thousand eight hundred and twenty-two, with the amount of tax for the year one thousand eight hundred and twenty-three, added thereto.

That upon receiving a list of the lands, as hereinafter described a second time, returned delinquent for non-payment of the tax, interest and penalties as aforesaid, with directions from the auditor of

State, to proceed to sell the same, or so much thereof, as should be necessary for the payment of the tax, interest, and penalties charged thereon. The county auditor caused the same to be advertised six weeks successively in the Benefactor, a newspaper printed at Georgetown, Brown county, Ohio, as follows, to wit:

Delinquent Land List.

The following is a list of lands delinquent in the county of Brown, for the years 1821, and 1822, with the tax of 1823 included; which will be sold at public auction, pursuant to the 38th section of an act entitled "An act levying a tax on land" passed February the 8th, 1820, or so much of each tract thereof, as will be sufficient to pay the tax, interest, and penalties charged thereon (if not previously paid,) the sale to be on the 29th day of December next, at the court-house, or place of holding courts, in and for the county of Brown, between the hours of ten o'clock A. M. and five o'clock, P. M. of said day. The person paying the sum due for the least quantity of the tract of land charged therewith, will be considered the purchaser of such quantity.

Proprietors.	No. of entry.	Original Proprietor,	Or'l. qn.	Water Course	Acres and 1 rates 2	3	Tax. D.	C.	M.
Brookes Humphrey.	1,690	H. Brooke.	1,000	Ohio.	1,000		50	06	0

WILLIAM MIDDLETON,
Auditor of Brown County.

MAY 12*th*, 1833.

That afterwards, to wit, on the twenty-ninth day of December, one thousand eight hundred and twenty-three, at the court-house, in the said county, the said county auditor, did proceed to sell the said lands as above described, offering each tract separately to any person who would pay the tax, interest, and penalties charged for the least number of acres, thereupon the following lands were sold to the persons hereinafter mentioned, no other person appearing and offering to pay the same for a less quantity of acres, they became purchasers, to wit:

There was sold to John S. Wills, two hundred acres of land, out of a tract of one thousand acres, as charged to Humphrey Brooke, part of an entry of one thousand acres, made in the name of said Humphrey Brooke, by number of entry 1,690. That after the sale as aforesaid, a certificate thereof, was by said county auditor given to the person purchasing the whole or part of a tract of land, sold for the tax charged on the whole tract as aforesaid. The plat and certificate of the county surveyor of Brown county, of the tract of land sold as aforesaid, to John S. Wills, was returned to this office, whereupon a deed was duly executed and delivered, for the aforesaid land, on the twenty-second day of April, one thousand eight hundred and twenty-four.

STATE OF OHIO.—*Brown County, ss.*

I, Hezekiah Lindsey county auditor, in and for said county, hereby certify, that the foregoing is a correct copy of the proceedings, relative to the advertising, selling, and conveying the land therein described, as appears from the record in this office.

Given under my hand at my office in Georgetown, this 9th day of May, 1838.

H. LINDSEY.
County Auditor.

JOHN WHITE KEELING, WILLIAM D. WOODHOUSE, & MARY ANN, his wife, formerly Mary Ann Keeling & Elizabeth G. Keeling, grand-children and heirs at law of William White, John S. Wills, and Henry Brush, comp'ts,
vs.
The unknown heirs of DAVID BUCHANAN, def's. } In Chancery.

Pleas at the court-house, in the town of West Union, in the county of Adams, and State of Ohio, before the honorable Joshua Collett and John C. Wright, Judges of the Supreme Court of the State of Ohio, in and for the county aforesaid, on the 14th day of April, in the year of our Lord one thousand eight hundred and thirty-two, in the fifty-sixth year of the Independence of the United States of America, and the thirtieth year of this State.

ADAMS COUNTY, *ss.*

Be it remembered, that heretofore, to wit, at a supreme court holden at the court-house within and for the county aforesaid, at May term, in the year of our Lord one thousand eight hundred and twenty-seven, came the defendants, by John Thompson, Esq., their counsel, and produced and filed, here in court, their certain transcript or copy of the record in the cause aforesaid, regularly certified by the clerk of the court of common pleas, in and for the county aforesaid, under the seal of the said court, which said transcript or copy of the record aforesaid, is in the words and figures, following to wit:

"JOHN WHITE KEELING, WILLIAM D. WOODHOUSE, and MARY ANN, his wife, formerly MARY ANN KEELING, ELIZABETH G. KEELING, grand-children, and heirs-at-law of WILLIAM WHITE, JOHN S. WILLS, and HENRY BRUSH, compl'ts.
vs.
DAVID BUCHANAN, defendants.

Pleas at the court-house in the town of West Union, in the county of Adams, and State of Ohio, before the honorable Joshua Collett, President of the seventh judicial circuit, Andrew Livingston, Job

Dirning, and Robert Morrison, associate judges of the court of common pleas, in and for the county aforesaid, on the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and twenty-seven, in the fiftieth year of the Independence of the United States of America, and in the twenty-fifth year of this State.

ADAMS COUNTY, *ss.*

Be it remembered, that heretofore, to wit, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and thirty-five, came the complainants by Messrs. Brush and Wills, their counsel, and produced and filed in the clerk's office, their certain bill in chancery, against the said defendant, David Buchanan, which said bill is in the words and figures, following, to wit:

To the honorable the judges of the court of common pleas, of Adams county, sitting in chancery.

Humbly complaining, sheweth unto your honors, your orators and oratrixes, John White Keeling, William Woodhouse, and Mary Ann, his wife, formerly Mary Ann Keeling, and Elizabeth G. Keeling, grand-children and heirs-at-law of William White, late of Princess Ann county, in the State of Virginia, deceased, and John S. Wills, and Henry Brush. That on or about the 30th day of April, in the year 1784, Capt. Samuel Gill, an officer of the revolutionary army of the U. S. in the Virginia line, on continental establishment, obtained a Virginia military land warrant, for four thousand acres of land, in consideration of his services as a captain in said line, granted by the State of Virginia, and issued from the proper officer, numbered (3,033) three thousand and thirty-three, and afterwards, some time in the same year; the said Gill, sold, assigned, and transferred the same warrant, for a valuable consideration paid him, to one Humphrey Brooke, who being so entitled to said warrant, on or about the 28th September, in the same year 1784, deposited the same in the proper office for location, the officer of the principal surveyor, of such military bounty lands, and obtained from Richard C. Anderson, who was the principal surveyor, and keeper of the said office, a receipt for said warrant, No. 3,033, bearing that date; and in the words and figures, following, to wit:

"LOUISVILLE, 28th Sept. 1784.

Received of Capt. Thomas Pemberton, military land warrant, in the name of Capt. Samuel Gill, for 4,000 acres, given by law, No. 3,033, issued the 30th April, 84, assigned to Humphrey Brooke, of King William county, signed Richard C. Anderson." And the said Humphrey Brooke, afterwards, on or about the 2nd day of February, 1787, for a valuable consideration paid him, sold, assigned, and transferred, (by endorsement on the back of said receipt,) all his interest, right, title, and claim of, in and to, the said warrant, 4,000 acres of land

and to one Gideon Grantland, his heirs, and assigns, forever, under seal and duly attested, bearing date as above, and afterwards on the same day, or within a short time thereafter, the said Grantland, for a valuable consideration paid him, sold, assigned, and transferred, the same land warrant to the above named William White, ancestor and grand-father of a part of your orators and oratrixes, bya written transfer or assignment, duly executed and attested on the same receipt, and your orators and oratrixes pray a reference to the said receipts and assignments thereon, above set forth, and that the same or attested copies, may be taken and considered as a part of this their bill of complaint. Your orators and oratrixes further shew that the said William White, then of Norfolk county, Virginia, some time on or about the 12th October, 1788, employed a certain John Thurman, to locate said lands for him, in the proper district of country, for which services and the incidental expenses attending the same, the said William White was to give said Thurman one thousand acres of said land, which contract was in writing duly executed by both parties, under seal, and bearing that date, October 12, 1788, and as in like manner for greater certainty, referred to as a part of this bill of complaint, pursuant to said contract and in virtue thereof the said Thurman did locate, or cause to be located the four thousand acres of land, and by virtue of said warrant by causing entries and surveys to be made thereon, each of one thousand acres of land, numbered 1,687, 1,690, 1,691, and 1,688, between the Sciota and Little Miami rivers, in the State of Ohio, the greatest portion of which lies in the county of Adams, and the balance in Brown county, Ohio, and your orators and oratrixes charge that the said entries and surveys were made by mistake, as they believe, in the name of the said Humphrey Brooke, instead of the said William White, as they ought to have been, probably upon the mistaken opinion of the surveyor or locater, that as the said transfers to said Grantland and White, were not upon the warrant, or attached thereto, and the said assignment to said Brooke, was upon the said warrant, that, therefore, the location should be in his name, when, as your orators and oratrixes say and charge, it was the duty of the principal surveyor, who kept the office when these locations were made, to have filed the said receipt and assignments thereon, with the said warrant, or attached them together, and made the entries accordingly, and it was the duty of said Thurman, who received said receipt with said assignments thereon, to have delivered the same to the said principal surveyor, and to have made the location according to his contract with the said William White in his name, and not in the name of said Brooke, but as entered, whether by misapprehension, mistake, or by design, said Brooke was, and could be, only a trustee to the use of the rightful owner of those lands; the said William White, and as such trustee had knowledge of the right of said White, and recognised the same in making an assignment on one of the surveys, of one thousand acres, to the assignee of said Thurman, who was only entitled to the same under his contract with said White, and your orators and oratrixes charge that said Brooke did so assign said survey, to the assignee of the said

Thurman, upon that ground and consideration, his, the said Thurman's right to the same as locater, under his contract with said White, and upon no other whatever, knowing, as the said Brooke did, and must know, that he had, long before parted with all his interest in said warrant and lands. And your orators and oratrixes further state and charge, that one David Buchanan, an alien subject of the King of the United Kingdoms of England, Scotland, and Ireland, residing in that part called Scotland (whom they pray may be made a defendant to this their bill of complaint,) by some fraudulent and improper means, and without any consideration paid, or in any other manner given to the said Brooke, or moving from the said defendant, has obtained patents and grants from the United States, for the other three thousand acres of land, located under and by virtue of said warrant No. 3,033, which patent or grants were procured by said defendant, or by some person in his name, on or about the 22d May, in the year 1802, and bears that date, as it is believed, and reference is made to the attested copies of said patents or grants, as a part hereof, and it is hereby charged, that as they were so procured and obtained, with the fraudulent intent to cheat and defraud the said William White and his heirs, and to deprive him and them, and your orators and oratrixes by such unjust means of their rights to those lands, and it is further charged that the same has been, under the pretence of any assignments. Upon the plats and certificates of the survey by the said Brooke, to the said defendant, which appearing so to be assigned by the said Brooke, (if really done by him, and the signature to such assignments in his proper handwriting, were thus fraudulently procured by said defendant, or some other person in his name,) were returned and filed, or deposited in the proper office, at Washington, and such grants and patents thereupon issued to, and in the name of the said defendant, by which means he has become invested with the legal title to said lands, if such alien could acquire any right or title to lands in this State, to the prejudice of the letters in equity of your orators and oratrixes, and if said signature of said Brooke, is in fact his proper handwriting, then the same, as it is believed, was made carte blanch, or upon the paper, without any assignment to any person written thereon, to be filled up in the name of the rightful owner, and procured of said Brooke professedly for that purpose, and the name of said defendant, afterwards fraudulently inserted, and however it may have happened, your orators and oratrixes charge that the said William White, never parted with his interest or right to said lands, and the said warrant in his life time, and that said defendant well knew the same, and that he gave nothing for said lands, and in equity has no right, and your orators and oratrixes further charge, that the said defendant was, at the time the assignment made, and all his life time before, and ever since hath been, and still is, an alien, the subject of the King of Great Britain, as aforesaid, and was not, and had never been naturalized, or become a citizen of the United States of America, or of any of the States, and that as such alien, he could not, at that time, acquire and hold lands in this State, and if acquired by just or honest means from said Brooke, or

without the knowledge of the right of said William White, at a time when he was so qualified to acquire or hold as nothing, *then vested*, to wit, in 1802, when the grant emanated, so by the act of February, 1804, authorizing aliens to acquire and hold lands as nothing, *then passed*, nothing could vest in such alien, unles the act can have a retrospective operation upon the prior grant, and upon the previous vested equity of said William White to divest the same, yet the said defendant sets up, and claims title under his grant so obtained, and, moreover by so obtaining the said grants, put it out of the power of said White, in his life, and prevents your orators and oratrixes from obtaining patents or grants from the Government for their said estates, and from obtaining of possession of the same, that they may enjoy and receive the profits thereof, and your orators and oratrixes further state and shew to your honors, that on the 8th day of April, 1825, the said John White Keeling, William Woodhouse, and Mary Ann, his wife, and Elizabeth G. Keeling, upon good and valuable consideration paid to them, granted and conveyed to your orators, John S. Wills and Henry Brush, their heirs and assigns for ever, one equal undivided third part of the aforesaid three surveys of land, No. 1,687, 1,690, and 1,691 founded upon the warrant No. 3,033, by deed bearing that date, exxclusive of two hundred acres sold for taxes, and purchased by said Wills, which in the same deed is relinquished to him, said Wills, and your orators and oratrixes for greater certainty refer to said deed, and make it a part of this their bill of complaint. And now, so it is, may it please your honors, the said defendant well knowing your orators and oratrixes right to said lands, refuse to relinquish the same to your orators and oratrixes, but combining and confederating himself to, and with other persons, unknown to your orators and oratrixes, (whose names, when discovered, they pray to have inserted herein, with apt and proper words to charge them,) how to injure, oppress, and defeat their rights, give out, in speeches, and pretend that he has acquired a good title to said lands, and that your orators and oratrixes have no right to the same. All which actings and doings of the said defendant and his confederates, are contrary to equity and good conscience and tend manifestly to the great wrong and injury of your orators and oratrixes. In tender consideration whereof, and for as much as they have not plain, adequate, and complete remedy at law, and can only be relieved by the aid and interprosition of a court of equity, where matters of this sort are properly cognizable and reliable. To the end, therefore, that the said defendant may, on his oath, answer all the matters aforesaid, as fully and particularly as if again repeated and interrogated, may it please your honors to grant the writ of subpœna, and because said defendant resides in Scotland, and is not within the ordinary process of the court, your orators and oratrixes pray an order of publication to bring the knowledge of the pendancy of this suit to the said defendant, and your orators and oratrixes further shew and state that their ancestor, the said William White, departed this life on or about the 30th day of January, 1808, intestate, leaving two daughters, to wit: Elizabeth Haynes, then a widow, her husband having died, before which, said

Elizabeth Haynes, on or about the 30th October, 1811, without issue or mother, intestate, and Mary G. Keeling, who intermarried with William L. Keeling, that the said William L. Keeling died on or about the 12th November, 1808. intestate, and the said Mary G. Keeling, formerly Mary G. White, died on or about the 17th April, 1818, intestate, leaving issue by her late husband, the said William L. Keeling, to wit: your orators and oratrixes, the said John White Keeling, Elizabeth G. Keeling, William D. Woodhouse, and Mary Ann, his wife, formerly Mary Ann Keeling, who are the heirs-at-law of the said William White, deceased, from whom these lands have thus descended upon and become vested in your orators and oratrixes, and your orators and oratrixes further shew and state that on or about the 8th day of June, in the year 1799, the said John Thurman sold and transferred his one thousand acres of said land, founded upon the warrant No. 3,033, by assignment on the plat and certificate of the survey No. 1,688, to one Robert Simpson for value received, duly sealed and attested, and afterwards, to wit: on or about the 9th January, 1800, upon producing the same plat and certificate of survey No. 1,688, so assigned by said Thurman to said Brooke, he assigned the same to said Simpson by assignment of that date, duly sealed and attested, which thus recognized the right of said William White to said warrants and lands, inasmuch as the said Thurman claimed under the said White, in manner aforesaid stated, and in no other manner whatever, and afterwards the said Simpson, on or about the 28th March, 1800, assigned and transferred the same plat and certificate of survey No. 1,688, to Nathaniel Beasley, upon which the said Beasley afterwards obtained a patent or grant from the U. S., for the said 1,000 acres of land contained in said survey No. 1,688, founded upon the warrant No. 3,033, to attested copies of all which, to wit: the said plat and certificate of survey No. 1,688, the said assignments thereon, and the patent or grant to said Beasly. Your orators and oratrixes pray a reference that they may be taken and made a part of this their bill of complaint; and your orators and oratrixes pray the court to decree that the defendant relinquish and convey to your orators and oratrixes the lands in the bill mentioned, according to their several proportions, by deed, containing covenants against him, and all persons claiming, under him, and such other and further general relief in the premises, as the nature and circumstances of their case requires, and as to your honors may seem meet and proper, and you orators and oratrixes will, &c.

BRUSH & WILLS, *For Complainants.*

And thereupon the complainants, by their counsel sued out of the clerk's office, their certain original writ of suppoena, in chancery, against the said defendant, which said writ issued in the words following, to wit:

"Seal of office.

THE STATE OF OHIO, *Adams County, ss.*

To the sheriff of Adams county, greeting:

We command you, that you summon David Buchanan to appear before the court of common pleas, next to be holden at the court-house in West Union, on the 18th day of April, inst., to answer a Petition in chancery, exhibited against him by John White Keeling, William D. Woodhouse, and Mary Ann, his wife, Elizabeth G. Keeling, John S. Wills, and Henry Brush, and this they shall in nowise omit, under the penalty of one thousand dollars, and have then there this writ.

Witness the honorable Joshua Collett, president judge of our said court, at the court-house, this sixteenth day of April, in the year of our Lord one thousand eight hundred and twenty-five, and in the twenty-third year of this State.

JOSEPH DARLINTON,
Clerk P. T. A. C."

And the sheriff of the county, to whom the said writ was directed, returned the same on the first day of the next succeeding term with the following endorsement thereon, to wit:

"The defendant, David Buchanan, not found in this county.

JOHN McDAIN,
Shff. A. C."

And whereas, afterwards, to wit, at a court of common pleas, holden at the court-house within and for the county aforesaid, at April term, the year last aforesaid, came the complainants, by their counsel aforesaid, and thereupon the cause aforesaid was continued until the next August term, and the same day given the parties, aforesaid, at the same place; at which day, to wit, at August term, in the year last aforesaid, until which time the cause aforesaid was continued, came the complainants, by their counsel aforesaid, and on motion of the complainants by their counsel, and it appearing to the satisfaction of the court, that the defendant is not an inhabitant of this State, it is ordered that the defendant appear here on the first day of our next November term, and answer the bill of the complainants, or it will be taken as confessed, and the matters thereof decreed accordingly; and it is further ordered that a copy of this order be published in the Village Register, a paper printed in the town of West Union, nine weeks before the next term of this court; and thereupon, the cause aforesaid was continued until the next November term, and the same day given the parties aforesaid, at the same place; at which day, to wit, at November term in the year last aforesaid, until which time the cause aforesaid was continued, came as well the complainants, by their counsel aforesaid, as the defendant, by

John Thompson, Esqr., his counsel; and the complainants, by their counsel, having proved, to the satisfaction of the court, that due notice of the pendency of this suit has been given by publication; ordered, that a rule be entered, that the defendant file his plea, answer, or demurrer, in this cause, in sixty days, or the bill of the complainants will be taken as confessed, and the matters thereof decreed accordingly; and, thereupon, the cause aforesaid was continued until the next March term, and the same day given the parties aforesaid, at the same place.

And whereas, afterwards, to wit, at the expiration of sixty days from the said November term, last aforesaid, came the complainants, by their counsel aforesaid, and the defendant having failed to file his plea, answer, or demurrer, according to the law and the rule of this court, a decree pro confesso is entered against him.

And whereas, afterwards, to wit, at the March term, in the year of our Lord one thousand eight hundred and twenty-six, until which time the cause aforesaid was continued, came the parties aforesaid, by their counsel; and, thereupon, the cause aforesaid was continued, until the next June term, and the same day given the parties aforesaid at the same place; at which day, to wit, June term, in the year last aforesaid, until which time the cause aforesaid was continued, came the parties by their counsel aforesaid, and thereupon the cause aforesaid was continued until the next October term, at the costs of the defendants; and if there is no answer filed by that time, there will be a final decree entered against the defendants.

And whereas, afterwards, to wit, at October term, in the year last aforesaid, until which time the cause aforesaid was continued, came the parties, by their counsel aforesaid; and, thereupon, the cause aforesaid was continued, until the next March term, and the same day given the parties aforesaid at the same place; and now at this day, that is to say, at March term, in the year of our Lord one thousand eight hundred and twenty-seven, until which time the cause aforesaid was continued, came the parties, by their counsel, and the defendant by his counsel moved the court to make Walter Stirling a defendant in this cause; and also moved the court for a continuance; which motions were overruled by the court, and this cause standing for hearing on the bill to him, as confessed, the court being satisfied that the pendency of this action had been duly published, according to law, and the defendant still failing to appear, and answer the said bill, the same is taken as confessed, and the court having examined the proofs, exhibits, and evidences, in this cause, are of opinion, that the law and equity of the case are with the complainants; and thereupon, order, adjudge, and decree, that the said defendant, David Buchanan, do, on or before the first day of June next, make, execute, and deliver to the said complainants, a deed of conveyance of the lands and premises in the bill mentioned; that is to say, the said three thousand acres of land, to the said complainants, their heirs and assigns, forever, to hold the same in portions as stated in said bill, as tenants in common to them and their heirs and assigns forever; which deed of conveyance, shall contain covenants against him, the

said defendant, David Buchanan, and his heirs, and against all persons claiming by, through, from, or under him, or them, or any of them, and their heirs respectively, and in case of default, in making such deed by the time aforesaid, that then, and in that case, this decree shall operate as such conveyance, according to the statute in such case made and provided; and it is further ordered, adjudged, and decreed, that the said defendant pay the costs herein expended, and if they are not paid within six months from this time, the complainants are to pay them; all which is decreed, ordered, and adjudged, accordingly; and the defendant, by his counsel, gave notice, that he would appeal from the decree aforesaid, to the Supreme Court of the State of Ohio, in and for the county of Adams, ordered that execution of the said decree be stayed, thirty days from the rising of this court.

THE STATE OF OHIO, *Adams County, ss.*

I hereby certify, that the foregoing is a true and perfect copy of the record in the cause to which it relates, as the same remains of record in my office, and that the defendant gave bond and security, on the appeal taken by him, as aforesaid, conditioned according to law.

In testimony whereof, I, Joseph Darlington, clerk of the court of common pleas, of the county aforesaid, have hereunto set my hand, and affixed the seal of [SEAL.] the said court, at West Union, this 25th day of April, in the year of our Lord 1827, in the 51st year of the Independence, of the United States of America, and in the 25th year of this State.

JOSEPH DARLINTON.

And thereupon came as well the complainants, by Henry Brush, Esqr., their counsel, as the defendant by his counsel, aforesaid, and the motion of the defendant's counsel, to enter a rule on the complainants, to make Walter Sterling a defendant, was overruled, and the cause aforesaid, was continued until the next May term, and the same day given the parties aforesaid, at the same place; at which day to wit, at May term, in the year of our Lord one thousand eight hundred and twenty-eight, until which time the cause aforesaid was continued, came the parties, by their counsel aforesaid, and the cause aforesaid was continued, until the next May term, and the same day given the parties aforesaid, at the same place; at which day, to wit, at May term, in the year of our Lord one thousand eight hundred and twenty-nine, until which time the cause aforesaid was continued, came their parties, by their counsel aforesaid, and the death of John S. Wills, one of the complainants, and of the defendant, David Buchanan, is suggested on record, and the cause aforesaid was was continued until the next August term, and the same day given the parties aforesaid at the same place.

And whereas, afterwards, to wit, on the sixth day of October, in the year last aforesaid, came the complainants, by their counsel, and produced and filed in the clerk's office of this court, his certain bill of revivor, in the words and figures following, to wit:

"To the honorable the Judges of the Supreme Court of the State of Ohio, in and for Adams County in Chancery:

Humbly complaining, showeth unto your honors, your orators, and oratrixes, John White Keeling, William D. Woodhouse, and Mary Ann his wife, formerly Mary Ann Keeling, and Elizabeth G. Keeling, grand-children and heirs at law of William White, deceased; Henry Brush, George W. King, and Elizabeth, his wife, formerly Elizabeth Wills, and Catharine Wills, an infant under the age of eighteen years, by her guardian ad litum, the said George W. King, who, together with the said Elizabeth his wife, and said Catharine Wills, are the children and heirs at law of John S. Wills, lately deceased; that your orators and oratrixes, and the said decedent, John S. Wills, in his life, to wit, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and twenty-five, exhibited their original bill of complaint, in the court of common pleas of said county of Adams, against David Buchanan, as the defendant thereto, thereby stating such matters and things, as are therein for that purpose more particularly mentioned, and set forth, and praying, as by the said bill appears, being referred to and considered a part hereof, for that purpose; and thereupon the process of subpoena, regularly and duly issued against the said defendant, David Buchanan, then living; but he being, living, and residing, as in and by said bill stated, in that part of the Kingdom of Great Britain called Scotland, and out of the jurisdiction of the said court, the order of publication, according to the prayer of said bill, and the act of Assembly in such case made and provided, was made by said court, and the same was published accordingly; yet the the said defendant, David Buchanan, (now deceased,) neither appeared or put in his answer to said bill, according to said order.

And thereupon, afterwards, in the November term of the said court, in the year last aforesaid, came as well the complainants by their council, as the said defendant, David Buchanan, then living, (now deceased,) by John Thompson, Esq. his counsel, and due notice of the pendancy of said suit being proven to the satisfaction of the court, by publication as aforesaid, it was ruled and ordered, that said defendant, then living, (now dead,) file his plea, answer, or demurrer, in sixty days, or the bill of complaints be taken as confessed, and the matters thereof accrued accordingly, and the cause was continued for answer until the next March term following, (1826,) and at the expiration of said sixty days, no plea, answer, or demurrer being filed according to law, and the rule aforesaid of said court, a decree, pro confesso, was entered, and at said March term, 1826, the cause was continued until the June term following, and at said June term continued until the October term following, at the costs of the defendant up-

on his application by council, by court, and then specially ordered that "if no answer filed by that term to wit, October term, 1826, there will be a final decree entered against said defendant, then living, and at said October term, 1826, cause again continued until March term, 1827, next following, at which said March term 1827, the parties by their counsel came, and defendant, then living, by his said counsel, moved the court to make Walter Sterling a defendant, and for a continuance; which motions were overruled by the court, and the cause then standing for hearing on the bill taken as confessed, the court being satisfied that the pendancy of the action had been duly published according to law, and the defendant then, still living, and failing to answer the said bill, the same by order of said court, was at said last mentioned term, and taken as confessed, and the court having examined the proofs, exhibits, and evidences, entered their final decree against said defendant, then still living, in substance, that he convey the lands and premises in said bill mentioned to said complainants, their heirs,and assigns forever. And said defendant gave notice of appeal to this honorable court, and the execution of the decree, stayed thirty days, and bond and security being given, said appeal was perfected, and at the May term, 1827, of this honorable court, the said defendant by his counsel, moved the court to enter a rule against the complainants to make Walter Sterling a defendant; which was overruled, and cause continued, and at the May term, 1828, continued until the next court, and at the May term following, 1829, now last passed, the death of said complainant, John S. Wills, was suggested, and the death of David Buchanan, defendant, was also suggested on record, and cause continued, and your orators and oratrixes state and shew, that the said complainants in said original bill, the said John S. Wills departed this life, on or about the eighteenth day of April last passed, leaving your orator, George W. King, and your oratrixes, Elizabeth, wife of said George W. and said infant Catharine Wills, his children, and heirs at law, and that said defendant, David Buchanan, then living in Scotland, aforesaid, departed this life, as your orators and oratrixes are informed, and verily believe, some time during the last year, leaving as they are informed and believe, children who are his heirs at law, on whom and to whom the legal title to said lands and premises have descended, and in whom the same hath become vested; and your orators and oratrixes say that the said writ and proceedings having become abated as to him and his interest by the death of said John S. Wills, your orator George W. King, and your oratrixes, Elizabeth, wife of said George and Catharine Wills, infant as aforesaid, by her said guardian, as they are advised, as the children and heirs at law of said decedent, John S. Wills, are entitled to have the said suit and proceedings revived in their names, as to their said father's interest, and the said suit and proceedings having abated by the death of said David Buchanan, your orators and oratrixes generally are entitled to have the same revived against the heirs at law of said decedant, David Buchanan, whom your orators and oratrixes say they do not know, and their names are unknown to your orators and oratrixes, yet, according to

the act of Assembly in such case made and provided, your orators and oratrixes pray that the said heirs at law of said decendant, David Buchanan, may be made defendants to this their bill of revivo. And your orators and oratrixes according to said act, are entitled to have the said suit and proceedings revived, prosecuted and carried on against the said unknown heirs, and the said cause put into the same state, plight and condition, as the same was in previous to the deaths aforesaid of the said John S. Wills and the said David Buchanan, to the end, therefore, that the said suit and proceedings which so became abated as aforesaid, may stand revived, and be in the same plight and condition, as the same was in, at the time of the deaths aforesaid of the said John S. Wills, and the said David Buchanan, and that said defendants may appear and answer the premises, or shew good cause to the contrary. May it please your honors to grant the State's most gracious writ of subpœna against the said unknown heirs of said decedent, David Buchanan, requiring them, and each of them, to appear and answer the premises, and if under age, to appear and answer by guardian, and for as much as it is not known where they reside or live, your orators and oratrixes pray the usual order of publication to bring the knowledge of the pendancy hereof to them according to said act, and that said defendants may be compelled to abide any decree which may be made herein, your orators and oratrixes pray relief against them, according to said—and your orators and oratrixes will, &c.

H. BRUSH, *Solicitor for Compts.*

On which bill of revivor is the following endorsement, to wit, "Adams County, *Ss.* Henry Brush, one of the complainants, made oath before the subscriber Master Commissioner in chancery, that he does not know the names of the heirs of the said David Buchanan, deceased, referred to in the above bill of revivor, and he understands and believes, that the other complainants do not know the said names of said heirs; and further said not.

H. BRUSH.

Sworn to and subscribed before me this 6th day of October 1829.
JOSEPH DARLINTON, *M. C. C. S. C. A. C.*

And whereas, afterwards, to wit, on the fourteenth day of October, in the year last aforesaid, the complainants by their counsel aforesaid, sued out of the clerk's office of this court, their certain writ of subpœna in chancery, in the words following, to wit:

"THE STATE OF OHIO, *Adams County, ss.*

To the Sheriff of the County aforesaid. We command you, that you summons "the unknown heirs of *of* David Buchanan, deceased," to appear before the Judges of our Supreme Court of the State of Ohio, next to be holden within and for the county of Adams, on the first day of the term, to answer unto a petition in chancery, exhibited against them by John White Keeling, William D. Woodhouse, and Mary Ann, his wife, formerly Mary Ann Keeling, and Elizabeth

G. Keeling, grand-children, and heirs at law, of William White, deceased, Henry Brush, George W. King, and Elizabeth his wife, formerly Elizabeth Wills, and Catharine Wills, an infant under the age of eighteen years, who sues by her guardian ad litum, the said George W. King, who together with the said Elizabeth, his wife, and the said Catharine Wills, are children and heirs of John S. Wills, lately deceased, and this they shall in no wise omit, under the penalty of one thousand dollars, and have then there this writ. Witness the honorable Calvin Pease, Chief Judge of our said court at the Court House, this fourteenth day of October, in the year of our Lord, one thousand eight hundred and twenty-nine, and in the twenty-ninth year of this State.

JOSEPH DARLINTON, *Clk. A. C.*"

And the Sheriff of the county to whom the said writ was directed, returned the same on the first day of the next term, with the following endorsement thereon, to wit; "not found as to the unknown heirs of David Buchanan, deceased.

JOHN McLAIRD, *Sheriff A. C.*"

And whereas, afterwards, to wit, at August term, in the year of our Lord, one thousand eight hundred and thirty, until which time the cause aforesaid was continued, came the parties by their counsel aforesaid, and in this cause it is decreed, that the defendant plead, answer, or demurrer to the bill of revivor, in nine months from the rising of this court; otherwise the cause to stand revived, agreeably to the prayer of the bill of revivor, saving to the parties, the question of the admissibility of an answer to the original bill, and all questions relative to the answer, and the motion made by the defendants counsel, to remove this cause to the United States circuit court, bring fully argued by counsel, the court overruled the motion, and the cause aforesaid was continued until the next May term, and the same day given the parties aforesaid, at the same place. At which day, to wit at May term, in the year of our Lord, one thousand eight hundred and thirty-one; until which time the cause aforesaid was continued, came the parties by their counsel aforesaid, and the defendant by his counsel, moved the court for a rule on the complainants, to amend their bill so as to make Walter Sterling defendant in this cause, which motion was overruled. And it is ordered that the defendant plead, answer, or demur to the bill of revivor, in nine months from the rising of this court, otherwise the cause to stand revived, agreeably to the prayer of the bill of revivor, saving to the parties, the admissibility of the answer to the original bill, and all questions relative to the answer and the cause aforesaid, was continued until the next April term, and the same day given the parties aforesaid, at the same place. And now at this day, that is to say, at April term, in the year of our Lord, one thousand eight hundred and thirty-two, until which time the cause aforesaid was continued, came the complainants by their counsel aforesaid, and the defendant having failed to appear, plead, answer, or demur, according to the decretal order of this court

heretofore made. It is ordered that the proceedings in this cause be revived, as they stood before the death of said Buchanan, and the said unknown heirs, against those *these* proceedings are revived, and they failing to appear and answer the said bill, the same is taken as confessed, and the court having examined the proofs, exhibit, and evidences in this cause, are of opinion that the law and equity of the case are with the complainants, and therefore, the court do thereupon order, adjudge, and decree, that the said defendants, unknown heirs of David Buchanan, deceased, do, on or before the first day of October next, make, execute, and deliver to the said complainants, a deed of conveyance of the lands and premises in the said bill mentioned, that is to say, the said three thousand acres of land, to the said complainants, their heirs or assigns forever, thereby conveying the said lands and premises to the said complainants, their heirs and assigns forever, to hold the same in portions as stated in said bill, as tenants in common to them, their heirs and assigns forever; which deed of conveyance shall contain covenants of general warranty against the said defendants, and all persons claiming, by, through, from, or under them, or any of them, and their heirs respectively. And in case of default of making such deed, by the time aforesaid, that then, and in that case, this decree shall operate as such conveyance according to the statute in such case made and provided; and it is further ordered, adjudged, and decreed, that the said defendants pay to the said complainants the costs herein expended, and the costs of this suit in the court of common pleas, within six months from this time, or in default thereof; that they have execution therefor, as from the law side of this court. And it is further ordered, that this cause be remanded to the court of common pleas by a special mandate, that the said court may award execution thereon, according to law.

(Signed) JOSHUA COLLET, *C. J.*

THE STATE OF OHIO, *Adams County, ss.*

I, Joseph Darlinton, Clerk of the Supreme Court of the State of Ohio, in and for the county of Adams aforesaid, do hereby certify that the foregoing is a true and perfect copy of the record in the cause to which it relates, as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at West Union, this [SEAL.] 28th day of April, in the year of our Lord, 1837; in the 61st year of the Independence of the United States of America, and in the 35th year of this State.

JOSEPH DARLINTON, *Clk. S. C. A. C.*

I, Frederick Grimke, Judge of the Supreme Court of Ohio, do hereby certify, that Joseph Darlinton, whose name is subscribed to the preceding attestations was at the time Clerk of the Supreme Court of Adams county, in the said State. I further certify, that the seal affixed

thereto, is the seal of the said court, and that the attestation is in due form of law. Witness my hand this 15th May, A. D. 1838.

F. GRIMKE,
J. Sup. Co. Ohio.

7th CIRCUIT COURT, U. S. *Ohio District.*

JOHN F. GAMES and NATHAN GILBERT, *ads.* JOHN STILES Ex Dem. WALTER DUN.

Be it remembered, that on the trial of the above cause, after counsel had been heard, and the court about to deliver their charge and instructions to the jury, the defendants prayed the court to instruct the jury, 1st, that by law it is necessary for the plff. to entitle himself to recover in this action of ejectment, to prove that the calls of the patent exist on the ground, at least the most material ones, such as "the four small locusts, southeast corner of survey No. 1,688, northwest corner to survey No 1,691, and southwest corner to James Williams survey, No. 1,164, as the begining corner in the patent in evidence. Also the sugar tree, and two lynns southwest corner to No. 1,691, at the second corner called for in said patent, and the branch crossed in the line, thence to the next corner. Also the white oak, sugar tree, and two lynns, at the third corner; and the branch crossed in the line thence. Also, the two sugar trees and a dogwood, southwest corner to survey No. 1,688, the fourth corner."

2d. It is necessary for the plff. to convince the jury, of the above facts and matters existing on the ground, or the most material ones by proofs in court, and that the consent rule entered into in this case, pursuant to the rule of the court, requiring the same, admitting possession by defendants, has no operation towards establishing those matters and facts, both of which instructions as above, asked by defendants by their counsel, the court refused to give, and instructed the jury, that by the rules of this court, the defendants in entering into the consent rule are bound to admit at the trial, that they are in possession of the premises in controversy, and declared their opinions accordingly; that the instruction asked for by defendants ought not to be given, and that the instruction so given to the jury, in place of that asked for, is according to law, to which opinions of the court the defendants, except, and pray the court to seal and sign the same exceptions containing the matters aforesaid. The defendants also, at the same time, asked the court to instruct the jury. 3rd. That it is necessary for the plff. to convince the jury by proofs in court, that David Carrick Buchanan, the grantor to Walter Sterling in the deed given in evidence, is the same person as David Buchanan named a grantee in the patent in evidence. "That his statement in the deed aforesaid, is no proof tending to establish that fact. The latter part of this third instruction asked for, to wit: That his statement in the deed aforesaid, is no proof tending to establish that fact;" the court refused to give to the jury, and as to the other part, the court said and instructed the jury, that they must reasonably be satisfied from the

evidence given to them, to wit, the deed and other documents in evidence, and the circumstance of the case, that the name David Carrick Buchanan and David Buchanan, are one and the same person; in other words, that the grantor, in the deed to Sterling is the same person, as the grantee in the patent from the U. S. and declared their opinions that such was the case; to which opinions the defendants except and pray the exceptions to be authenticated accordingly. At the same time the defendants also asked the following instructions, 4th, that the record of the proceedings and decree given in evidence by defts. from Adams county, may be considered by the jury as conveying the title to the land in controversy in that suit to the complainants therein, and will, and ought to affect parties and privies, who had knowledge of the same, to prevent their taking title from the *the* defendant therein from the time such knowledge existed. In place of this instruction asked the court, said and instructed the jury, that to prevent Buchanan from making a good deed to those lands, it was necessary he should have notice actual or constructive, prior to the making such deed, that the commencement of the suit to be such constructive notice, ~~to~~ the service of the process or the order of publication, giving such notice to appear and answer, and such publication made, that in this case if the jury should find the deed from Buchanan to Sterling, was dated June 27th, 1825, and was at that time delivered, and the order of the court for the publication not made until August following, as appears in the record aforesaid, it was competent for Buchanan to make such deed to Sterling, and declared their opinions accordingly, to which defendants, except and pray the exceptions to be sealed and signed, and ordered to record accordingly.

JOHN McLEAN, [SEAL.]
H. H. LEAVITT, [SEAL.]

It is admitted that the property in dispute exceeds two thousand dollars in value. On motion of the defendants, by their attorney, a writ of error is allowed in this cause, to the Supreme Court of the United States, on condition a bond is filed with the clerk of this court in the sum of one thousand dollars, with Henry Brush as security. It is ordered by the court, that the execution be stayed in the above cause, for the space of thirty days from the rising of the court, to give the defendants an opportunity to file a bill in chancery.

And afterwards, to wit, on the thirty-first day of July, Anno Domini one thousand eight hundred and thirty-eight, the said defendants filed in the clerk's office of said court, their bond as follows, to wit:

CIRCUIT COURT OF THE UNITED STATES,
For the Seventh Circuit and District of Ohio.

JOHN STILES EX. DEM. WALTER DUN, Plff.., *vs.* THOMAS NOKES, Deft., JOHN F. GAMES, and NATHAN GILBERT, Defts. } In Ejectment.

Know all men by these presents, that we, John F. Games, Nathan Gilbert, and Henry Brush, are held and firmly bound unto the above named Walter Dun, lessor of John Stiles, in the sum of one thousand dollars, to be paid to the said Walter Dun, his executors and administrators, to which payment, well and truly to be made, we bind ourselves, and each of us jointly, and severally, and our, and each of our heirs, executors, and administrators, firmly by these presents; sealed with our seals, and dated the 6th day of July, A. D. 1838.

Whereas, the above named John F. Games and Nathan Gilbert hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgement rendered in the above entitled suit by the circuit court of the United States for the 7th circuit and district of Ohio.

Now the condition of this obligation is such, that if the above named John F. Games and Nathan Gilbert shall prosecute their said writ of error to effect, and answer all damages and costs; if he shall fail to make his plea good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

H. BRUSH, [SEAL.]
JOHN W. GAMES, [SEAL.]
WM. WILLS, [SEAL.]

Sealed and delivered in presence of
FREDERICK WOLCOTT.

THE UNITED STATES OF AMERICA,
District of Ohio, ss.

I, William Miner, clerk of the 7th circuit court of the United States, within and for the said district of Ohio, hereby certify that the foregoing is truly taken and copied from the records of the proceedings of said court.

In testimony whereof, I have hereunto set my name, and [SEAL.] caused to be affixed the seal of said court, this fourteenth day of December, A. D. 1838.

Attest:

WM. MINER, *Clerk.*

Transcript. Seal $25 00. Paid by
H. BRUSH, Esq., *W. M.*

I, John McLean, one of the associate justices of the Supreme Court of the United States, do allow this writ of error.

Witness my hand and seal, this 14th day of December, A. D. 1838.

JOHN McLEAN, [L. S.]

THE UNITED STATES OF AMERICA.

To the honorable the Judges of the Circuit Court of the United States for the Seventh Circuit and district of Ohio, greeting:

Whereas, in the record and process, and also in the rendering judgment in a certain action of ejectment, which was in the said court, between Joshua Stiles, ex. dem. Walter Dun, plaintiff, and John F. Games and Nathan Gilbert, defendants, manifest error hath intervened, as it is said to the great damage of the said John F. Games and Nathan Gilbert, as by their complaint we are informed, and we being willing that the error aforesaid (if any) be corrected, and full and speedy justice be done in this behalf to the said parties, command you that the record, process, and judgment aforesaid, with all things touching the same, under your seals, distinctly and plainly without delay, you send and certify to the judges of the Supreme Court of the United States, on the first day of the next term of said court, so that the judgment aforesaid, being inspected, the court may further for correcting the error aforesaid, do that which of right and according to law ought to be done.

Witness the honorable Roger B. Taney, Chief Justice of the United States of America, this 14th day of December, in the year of our Lord one thousand eight hundred and thirty eight, and in the 63d year of the American Independence.

[SEAL.]

Attest:

WM. MINER, *Clerk.*

THE UNITED STATES OF AMERICA,
Supreme Court of the United States.

To John Stiles, ex. dem. Walter Dun, greeting:

Whereas, John F. Games and Nathan Gilbert have obtained the allowance of our writ of error to the circuit court of the United States for the seventh circuit and district of Ohio, directed, to remove into the said Supreme Court, to be holden at the city of Washington, on the Monday in the month of January next, the record of a certain plaint, process, proceedings and judgment in an action of ejectment, wherein you, the said John Stiles, ex. dem. Walter Dun, in that action lately recovered against the said John F. Games and Nathan Gilbert, his term and possession yet to come and unexpired, in the premises your declaration mentioned, besides costs, as by the said record in the said circuit court and district aforesaid, remaining appears, in which said record and proceedings, and also on the rendition of the judgment thereupon, manifest error hath intervened, as

by the said John F. Games and Nathan Gilbert, we are informed, and our said writ of error granted, issued, and allowed, as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be. You are, therefore, hereby commanded and cited, to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the Monday in the month of January next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the honorable Roger B. Taney, Chief Justice of the United States of America, this 14th day of December, in the year of our Lord one thousand eight hundred and thirty-eight, and in the 63d year of the American Independence.

[SEAL.]

Attest:

JOHN McLEAN.

SUPREME COURT U. S.

JOHN F. GAMES and NATHAN GILBERT,
vs.
MARY A. TOMPKINS, JOHN G. DUN, JAMES DUN, WALTER A. DUN, and ROBERT G. DUN, the said Walter A. Dun, and Robert G. Dun, by P. Wilcox, their guardian, heirs and devisees, of Walter Dun, deceased.

And the said John F. Games and Nathan Gilbert, plaintiffs, say that there is manifest error in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, in this, that said judgment is in favor of said Walter Dun, deceased, and against said plaintiffs; whereas, the said judgment ought to have been in favor of said plaintiffs, and against said Walter Dun, deceased.

2d. There is likewise error in said record and proceedings, and judgment in this; that on the trial of the cause, the court admitted as evidence in said cause, a paper purporting to be a deed from, or signed by, David Carrick Buchanan to Walter Sterling, as appears by bill exceptions, which, for the reasons in said bill of exceptions stated, the same should not have been admitted in evidence.

3d. There is also error in this that, said court on the trial aforesaid, admitted in evidence to the jury a copy of another paper purporting to be a deed from said Walter Stirling to said Walter Dun, which, for the reasons in said bill of exceptions stated, ought not to have been admitted in evidence.

4th. There is also error in this, that said court refused to admit a certified copy of a deed, from William Middleton, auditor of Brown county, to John S. Wills, for two hundred acres of land, for the reasons stated in said bill of exceptions; whereas, the same evidence ought to have been admitted.

5th. There is also error in this, that said court refuse to admit the same deed or copy accompanied by a duly certified copy of the record of the proceedings, at and before the sale of said lands for taxes, for the reasons stated in said bill of exceptions; whereas, said evidence ought to have been admitted.

6th. There is also error in this, 1st, in refusing to give the first instruction to the jury, asked by the defendants in that case, who are plaintiffs in this writ of error; 2d, in refusing to give the second of said instructions to said jury, asked for as aofresaid; 3d, in refusing to give the third of said instructions to said jury, asked for as aforesaid; 4th, in refusing to give the fourth of said instructions to said jury, asked for as aforesaid, and giving instructions, as appears by said bill of exceptions; all which appears by said bill of exceptions; and for which several errors, and others appearing in said record and proceedings, the said John F. Games, and Nathan Gilbert, prays that said judgment may be reversed, annulled, and held for naught, and duly restored to all things they have lost thereby.

H. BRUSH,
Att'y for Def't.